



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
SAVANNAH DISTRICT CORPS OF ENGINEERS  
P.O. BOX 889  
SAVANNAH, GEORGIA 31402-0889

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES DEPARTMENT OF THE ARMY  
AND  
THE GEORGIA PORTS AUTHORITY**

**SUBJECT:** Memorandum of Understanding between The United States Department of the Army and The Georgia Ports Authority, Savannah Harbor Expansion Project, Georgia and South Carolina

**ARTICLE I - PURPOSE AND INTENT**

A. This Memorandum of Understanding ("MOU") is entered into between the U.S. Department of the Army ("DA"), and the Georgia Ports Authority ("GPA"). The DA and the GPA are referred to collectively herein as "the Parties". The purpose of this MOU is to state the mutual understandings and responsibilities of the Parties regarding the preparation of the Tier II Environmental Impact Statement ("EIS"), for the Savannah Harbor Expansion Project ("PROJECT") authorized by Public Law 106-53, and that the EIS include the information as required by Section 101(b)(9)(B) of the Water Resources Development Act of 1999 (WRDA 1999).

B. It is the intent of the Parties to satisfy the requirements of WRDA 1999, the Report of the Chief of Engineers (dated October 16, 1999), the National Environmental Policy Act ("NEPA"), and other applicable laws, regulations, and policy guidance of the DA. In complying with these laws, regulations, and policies, the Parties recognize the need that the project must meet the goals of environmental acceptability, engineering soundness/technical feasibility and economic justification, and specifically recognize the role and responsibilities of the DA and the GPA in ensuring that such requirements are

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met. The Parties understand that, in the event of conflict between any provision in this MOU and Federal laws, regulations, and policies, the Federal laws, regulations, and policies govern the actions of the DA.

C. It is also the purpose and intent of this MOU to include the provisions for consultation and coordination with the State of Georgia and South Carolina and the other Federal agencies as also required by Section 101(b)(9)(B) of WRDA 1999.

## **ARTICLE II - ROLES AND RESPONSIBILITIES OF THE PARTIES**

### **A. ROLES.**

1. The DA shall serve as the "lead agency" for the preparation of the EIS, within the meaning of the Council on Environmental Quality regulations, 40 C.F.R. 1501.5 & 1508.16.
2. The GPA will be considered a Cooperating Agency for the EIS within the meaning of 40 C.F.R. 1501.6 and 1508.5.
3. The GPA is the non-Federal interest of the Federal PROJECT.

### **B. RESPONSIBILITIES.**

1. The DA is responsible for:
  - a. Ensuring compliance with applicable federal laws and regulations governing the preparation of the EIS.

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- b. Independent, objective review and oversight of the preparation of the required PROJECT documents and management of the NEPA process.
  - c. Ensuring that the resulting EIS is sufficient to meet the requirements of the authorization in WRDA 99, requirements of the Report of the Chief of Engineers dated October 16, 1999 regarding this PROJECT, and NEPA, and other pertinent Federal laws, regulations, and policies.
  - d. The costs associated with the preparation, public coordination, and oversight of the EIS, provided that the expenditure of any funds by the DA associated with the PROJECT is subject to the appropriation by Congress of funds available for that purpose, which appropriation is not guaranteed.
- 2. The GPA is responsible for:
  - a. "WORK" as defined as the necessary studies, reports, data collection, and gathering of other information required for the preparation of studies, reports, collection of data, and all other information and data required for the preparation of the EIS and for participation in the EIS processes. All organizations contracted to assist in the Work, including agents working on behalf of the GPA, the primary contractor and their subcontractors, are collectively referred to herein as the "Contractors."
  - b. All costs to accomplish the Work associated with the DA's preparation of the EIS, modified as appropriate by the use of Federal appropriated funds addressed in paragraph B.1.d. of this Article.

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3. Both Parties will cooperate in the production of, among other activities:
  - a. The EIS and General Reevaluation Report ("GRR") final decision documents.
  - b. The Project Management Plan (PMP), covering the implementation plan for the EIS and GRR.
  - c. The environmental and other technical research and engineering studies that form the basis for the EIS and GRR.
  - d. The scoping sessions, public hearings, and meetings in support of NEPA.
  - e. The final drafting and issuance of the EIS.

### **ARTICLE III - GENERAL PROVISIONS**

- A. The DA and the GPA will strive to integrate the procedures required by NEPA, WRDA '86, WRDA '99, and other federal and State (Georgia and South Carolina) laws applicable to the PROJECT so all such procedures run concurrently as much as possible rather than consecutively.
- B. The DA and the GPA will, if considered more efficient and effective, combine the GRR and EIS into one document as provided for by 40 C.F.R. 1500.4(o) and 1506.4.

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C. The DA and the GPA will promote cooperative consultation among affected local, state (Georgia and South Carolina), and federal agencies prior to the issuance of the draft EIS.

D. The DA and the GPA will exert all reasonable efforts to complete the EIS on a schedule jointly developed by the Parties.

E. The GPA will facilitate coordination and the exchange of information among and between the contractors and the DA relating to the preparation of the EIS.

F. The DA and the GPA will reestablish the "Vertical Team" similar to that which operated during the Tier I - Feasibility Study Process. The "Vertical Team" will consist of senior representatives of the GPA, U.S. Army Corps of Engineers, Savannah District, South Atlantic Division, Headquarters USACE, and the Office of the Assistant Secretary of the Army (Civil Works). The objective of the Vertical Team is to ensure:

1. That through timely and concurrent review, all policy, procedural, and technical issues are raised and resolved in an expeditious manner;
2. That all appropriate interim documents are reviewed in a timely manner;  
and
3. That the resolution is properly documented.

G. The DA and the GPA will cooperate in regular official and documented consultation and coordination with the States of Georgia and South Carolina and Federal agencies to ensure that the EIS fully consider the views of those agencies.

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H. Pursuant to 40 C.F.R. 1506.5, based upon review of Federal Standard Form 254 for each of the current contractors, the Savannah District Engineer has determined that Lockwood Greene Engineers, Applied Technology and Management, and Rees Engineering and Environmental Services are qualified to perform the work in which they are participating. The GPA will submit written requests to the DA for approval of all additional Contractors the GPA proposes to retain for the PROJECT pursuant to 40 C.F.R. 1506.5. The request for approval will provide the Federal Standard Form 254 that identifies the technical and other qualifications of each such proposed Contractor, and the individuals with that Contractor who will work on the PROJECT, and will list other similar contracts performed by such Contractor for work similar to that which GPA proposes they perform on the PROJECT. For employees of the GPA that will be producing, writing, authoring, reviewing, approving, directing, deciding, or generating any of the documents involved in the EIS; written documentation of said employee's curricula vitae shall be submitted to the DA for approval.

I. The GPA shall provide for the approval of the DA a "Disclosure Statement" executed by each Contractor as required by 40 C.F.R. 1506.5(c). The DA will specify the language required to document that each have no direct or indirect financial interest in the outcome of the PROJECT except with regard to the preparation of the EIS.

J. The GPA shall ensure that the contract limit any remedies available to the Contractor so as to affirmatively relieve the United States of America, the DA, and its officers and employees from any liability arising out of the performance of the work or the termination of the contract. The DA will furnish the necessary language for this purpose. It is understood that for each contract entered into between the GPA and a Contractor prior to the effective date of this MOA, the GPA will ensure that such Contractors confirm in writing that they will hold the United States of America, the DA,

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and its officers and employees harmless from any liability arising out of the performance of the work or the termination of the contract.

K. The Parties agree that, in the event that the DA becomes involved in litigation brought by a non-Party arising out of or involving the EIS, the GPA shall cooperate fully in the defense of such litigation, to the maximum extent permissible by law. The GPA shall ensure that each contract and subcontract will provide that the Contractor(s) and Subcontractor(s) will fully cooperate with the DA in the defense of the litigation. In the event the GPA and/or its Contractor(s) and Subcontractor(s) become involved in litigation brought by a non-party arising out of or involving the PROJECT, the extent of the DA cooperation in the defense of such litigation will be determined by the U.S. Department of Justice.

L. The DA and the GPA shall each:

1. Appoint a Principal Representative to serve as its central point of contact on matters relating to this MOU. Notice to the Principal Representative shall constitute notice to that Party. In addition, notice to and between the District Commander, Savannah District, Corps of Engineers and the Executive Director and/or Deputy Executive Director of GPA shall also constitute notice to the Parties.

2. Appoint other representatives, as each deems necessary to accomplish the coordination necessary for the preparation of the EIS. Notice to any such other representative does not constitute notice to that Party. Only a notice to the Principal Representative, or to the District Commander, Savannah District, Corps of Engineers and the Executive Director and/or Deputy Executive Director of GPA shall constitute notice to that Party.

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3. Have their respective representatives attend meetings with Federal Cooperating Agencies, (as defined herein) and with other Federal, States of Georgia and South Carolina, regional, and local agencies for the purpose of promoting communications and receiving comments in preparation of the EIS as required by law or as otherwise appropriate.

4. The GPA will provide to the DA and to the Federal Cooperating Agencies access to, and review of, all procedures and underlying data used by the Contractors performing the WORK, including, but not limited to, field reports, subcontracting reports, and reports of interviews with concerned private and public parties, regardless of whether such information is reflected in a draft or final written work product.

#### **ARTICLE IV - FEDERAL COOPERATING AGENCIES**

A. The DA and the GPA will request that the following Federal agencies serve as "Federal Cooperating Agencies" in the preparation of the EIS consistent with 40 C.F.R. 1501.6 and 1508.5:

1. The National Marine Fisheries Service;
2. The U.S. Fish and Wildlife Service; and
3. The U.S. Environmental Protection Agency.

B. The DA will provide the Federal Cooperating Agencies with draft and/or final written work product of the EIS and/or other supporting reports and information for review and comment, as they become available.



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## **ARTICLE V - PROCEDURES**

A. The GPA and the DA will cooperate in development of a Project Management Plan (PMP), recognizing the primary role of the DA to determine the necessary scope to comply with WRDA 99, NEPA, and other pertinent Federal laws, regulations, and policies. The PMP will meet at least all the same scope and content requirements in accordance with ER 5-1-11, U.S. Army Engineers Business Process, and should include, but not be limited to detailed descriptions of all technical work to be performed, the methodologies proposed to perform the work, an identification of the entities that will perform the work, the schedule for the production of the EIS, and the internal and external quality control review procedures. The PMP shall include an up to date listing of the appointed Principal Representatives and other appointed representatives referenced in paragraphs L.1. and L.2. of Article III.

B. The DA will request comments on the PMP from the Federal Cooperating Agencies. After receipt of these comments and the comments from the scoping process conducted pursuant to 40 C.F.R. Sec. 1501.7, the DA will issue a final PMP. The final PMP and this MOU shall establish the work required to produce the EIS.

C. The PMP for the PROJECT may be amended by the DA as it deems necessary as the WORK proceeds, provided that any such amendments, which require the expenditure of additional funds by the GPA, must receive prior GPA approval before they become effective. The GPA recognizes, however, that should the GPA not approve any such amendment at any time during the preparation of the EIS, the DA, at its sole discretion, may decline to proceed further with the EIS process and may terminate this MOU pursuant to Article VI below. Likewise, the DA recognizes that in the event of termination of this MOU, the GPA may, at its discretion, proceed with completion of the work products and submit them to the DA, or seek a new authorization under procedures of Section 203 of WRDA 86.

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D. The GPA will provide a monthly written report, provided by each contractor, to the DA on the progress of their work product. The DA will forward copies of the monthly report to the Federal Cooperating Agencies as necessary. This report shall describe the present status of each aspect of the work, any problems encountered, recommendations for modifications to the PMP, and any changes in methodology or schedules for completion.

E. As each draft or final written work product is completed, such portion shall be transmitted to the DA and the GPA concurrently. The GPA commits that it will not review or discuss the data or analyses developed by the contractor or its subcontractors prior to the submission to the DA and will not review, modify, or edit the contractor's or subcontractor's work prior to submission to the DA. All suggestions for modifications or changes to such sections recommended by the GPA and the Federal cooperating agencies, or other parties shall only be made to the DA. Based on its review of such work product and the comments of the GPA and the Federal Cooperating Agencies, the DA will provide consolidated comments and direction to the GPA on their associated work product. The GPA will approve, modify, comment thereon and/or accomplish such further work as directed by the DA.

F. To facilitate the development and preparation of the EIS, Joint meetings among the DA, the GPA and the Federal Cooperating Agencies, and the contractors may be held. In addition, the GPA authorizes the DA to work directly with the contractors for purposes of assuring objectivity in preparing the WORK. The GPA will provide (and direct its contractors to provide) direct access to the DA and the Federal Cooperating Agencies of all procedures and underlying data used in developing work products, including, but not limited to, field reports, subcontracting reports, and interviews with concerned private and public parties, whether or not such information may be contained in the draft and/or final EIS. The DA and the GPA recognize that such direct contact does not establish a

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contractual relationship between a Contractor and the DA or the Federal Cooperating Agencies. The DA will give prior notice to the GPA and, as appropriate, the Federal Cooperating Agencies of any meetings the DA schedules with a Contractor. Such notification will include the time, place, and purpose of the meeting and the opportunity to attend.

G. The GPA recognizes that the DA may consult, as it deems appropriate, directly with other Federal, States of Georgia and South Carolina, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA, Federal planning regulations, and other applicable laws and regulations.

H. The GPA shall assure the full cooperation of their Contractors with respect to their participation in any public workshops, hearings, or meetings as deemed appropriate by the DA to foster public familiarity with and participation in the NEPA process.

I. The DA will prepare the draft EIS, utilizing as a basis, final reports, studies, data, or other information identified in the PMP and circulate the draft EIS for review and comment in accordance with applicable laws, regulations, and policies.

J. The DA will provide all comments received on the draft EIS to the GPA and the Federal Cooperating Agencies for review and consideration. The GPA will require their contractor(s) to provide proposed responses in consultation and advice from the DA and Federal Cooperating Agencies. The contractor's proposed responses will be submitted to the DA, the GPA, and the Federal Cooperating Agencies for review and comment. The GPA recognizes that the DA has the final call and may accept or reject the contractor's responses as necessary.

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K. The DA will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which are validly designated as confidential by the GPA or the Contractors and/or which contain trade secrets, or other commercial or financial information, to the extent allowed under the Freedom of Information Act ("FOIA"). In accordance with regulations under the FOIA, if information the GPA or a Contractor has designated as confidential is requested by a non-Party under the FOIA, the DA shall notify the GPA and the Contractor of the request and provide the GPA and the Contractor the opportunity to comment to the public disclosure of such information. The DA will make the final decision on such a disclosure.

L. The GPA recognizes that documents produced by the DA are Federal, not State (Georgia or South Carolina) documents, and are governed by Federal law and the disclosure of which is protected by Federal law and not subject to Georgia Open Records Act. If information the DA has designated as confidential is requested by a non-Party under the provisions of the Georgia Open Records Act in effect at the time of such a request, the GPA shall notify the DA of the request to provide the DA an opportunity to object to the public disclosure of such information by appropriate action.

#### **ARTICLE VI - AMENDMENT, MODIFICATION, AND TERMINATION**

A. This MOU may be modified or amended only by written agreement of the Parties.

B. Either Party may terminate this MOU at any time upon providing 30 days written notice to the other Party.

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#### **ARTICLE VII - DISPUTE RESOLUTION**

In the event of a dispute between the Parties with respect to any matter addressed in this MOU, the GPA and the DA will use their best, good faith efforts to resolve that dispute informally. Resolution of any such dispute will first be attempted by the DA and GPA Principal Representatives (PRs). If the dispute is not resolved at that level, the matter may be referred to the Vertical Team. The District Engineer may consult with the Vertical Team on the issue as the District Engineer deems appropriate. In the event the DA position is not acceptable to the Executive Director of the GPA, the respective parties may consider termination of the MOU in accordance with ARTICLE VI above.

#### **ARTICLE VIII – MOU NOT A LEGALLY ENFORCEABLE AGREEMENT**

The DA and the GPA recognize and understand that this MOU is not a legally binding or enforceable document. This MOU neither confers nor establishes any rights or privileges enforceable by law, and cannot be the subject of any litigation to enforce its provisions.

#### **ARTICLE IX - OTHER OBLIGATIONS**

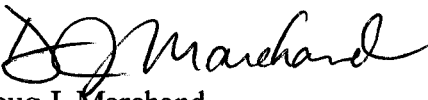
This MOU does not replace any prior MOUs between the DA and the GPA that relate to the PROJECT. In addition, any other pre-existing or independent obligations of the Parties are not affected by this MOU.

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ARTICLE X - EFFECTIVE DATE

This MOU shall become effective when signed by both the GPA and the DA, as noted below.

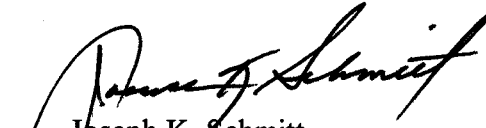
THE GEORGIA PORTS AUTHORITY  
BY

  
Doug J. Marchand  
Executive Director  
GEORGIA PORTS AUTHORITY  
STATE OF GEORGIA

Date:

7/6/01

DEPARTMENT OF THE ARMY  
BY

  
Joseph K. Schmitt  
Colonel, U.S. ARMY  
DISTRICT ENGINEER

Date:

8 July 01